

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 315 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

VELJIBHAI M DHOLARIA

Versus

DIST DEVELOPMENT OFFICER

Appearance:

MR KK SHAH for Petitioner

MR.M.A.BUKHARI,AGP,for Respondent No. 1, 3

Respondent No.2 served.

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 03/12/97

ORAL JUDGEMENT

The main grievance in this petition is that the petitioner, who is working as a Primary Teacher in Sajadiyadi Primary School since December 1973 and is possessed of qualification of a post-graduate degree in commerce and had done his B.Ed. in 1978, was entitled to benefits available to graduate and B.Ed. trained

teachers under the revised pay-scales for which he first made his claim in August 1984. By Government resolution dated 2.9.1985, the Government had taken decision to grant such benefits to trained teachers. After resolution of the Government, the petitioner again made representations from time to time between 8.12.1986 and 11.3.1989. Ultimately, the petitioner was called for hearing by respondent No.2-District Primary Education Officer on 16.4.1990 and he ordered that petitioner is entitled and be paid within two months the pay-scale of trained teacher. However, request for interest on such delayed payment, which has been caused due to the administrative reasons, was denied. Petitioner filed an appeal before the Gujarat State Services Tribunal, which appeal was not entertained on the ground that appeal for a claim only relating to interest on delayed payment is not envisaged under the jurisdiction of the Tribunal, vide communication dated 30.11.1990. Moreover, the petitioner further alleges that inspite of order having been made on 16.4.1990, payment, even in terms of the order has not been made. Hence this petition seeking direction for release of arrears along with interest thereon for delayed payment. So far as question of releasing the payment of arrears of benefit available to B.Ed. trained teachers in terms of Govt. resolution dated 2.9.1985 is concerned, it is beyond controversy, in view of the order of D.E.O. dated 16.4.1990.

First question that needs consideration is claim for interest. It is settled that if there is delay on account of administrative reasons in legitimate payment due to the employee, on such delayed payment the employee is ordinarily entitled to interest. In State of Kerala and others vs. M. Padmanabhan Nair, AIR 1985 SC 356, the apex court observed:

"The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

Reference may also be made to A.C. Patel vs. State of Gujarat, 1989(2) G.L.H.(U.J.) 12.

In this case, the respondent No.2 has been refused interest only on the ground that since delay in making the payment is for administrative reasons, the

petitioner is not entitled to interest thereon. This clearly goes to show that delay lay at the door of respondents. In view of settled legal position, the petitioner's claim for interest on delayed payment of his legitimate dues at market rate requires to be allowed.

Next question that arises is interest be allowed from what date and at what rate. The petitioner has made his claim to the benefits of a trained teacher for the first time on 1.8.1984, but at that time there was no Government-decision. However, by resolution dated 2.9.1985, the Government has decided to grant such benefits to B.Ed. trained teachers. In spite of Government resolution dated 2.9.1985, such benefits were not released to the petitioner, thereafter. After the Government Resolution dated 2.9.1985, the representation which the petitioner appears to have made, is on 8.12.1986. Considering three months to be reasonable for deciding such representation, the representation of the petitioner ought to have been decided by 31.3.1987. Yet it was decided in petitioner's favour on 16.4.1990 and payment therefor has also not been made promptly, which was payable to the petitioner as per order, and he was compelled to approach this Court. In these circumstances, the petitioner must be held entitled to claim interest on delayed payment of such benefits at least from 1.4.87 until the benefits due under revised pay scales and due under the Government Resolution dated 2.9.1985, which became due to be paid to him from time to time, until the same are paid to him. It will be reasonable to allow interest @15% on delayed payments

The petition deserved to be allowed with following directions:

The respondent shall pay all arrears of pay determined in terms of order dated 16.4.1990, if not already paid, along with interest @ 15% on such sum as became payable to petitioner on 1.4.1987 including arrears until then and on such amount that became due thereafter with effect from date on which such amount became due until actual payment of amount is made to the petitioner. All amounts due as a result of this order shall be paid within 3 months from the date of service of order, whether through court or by the petitioner by producing the certified copy of the order.

The petitioner shall submit calculation of his

claim on account of interest @ 15% per annum on that basis before the concerned authority within a period of one month from today, and within a further period of two months from receipt of such claim, the concerned authority shall make the payment of such amount as on verification of the claim is found to be correct and payable to the petitioner, in terms of this order.

Rule made absolute, as aforesaid. No order as to costs.
